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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Stevens et al.

Serial No.: 10/613,548

Filed: July 3, 2003

For: **Method and Apparatus for Tower Reinforcement System**

Attorney's Docket No: 5142-001

**Patent Pending**

Examiner: Mr. Tan Le

Group Art Unit: 3632

Cary, North Carolina  
October 29, 2004

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In reply to the Restriction Requirement of 29 September 2004, Applicant elects claims 1-23, identified as "Group I" by the examiner. Claims 1-23 relate to Figures 2-19. This election is made with traversal on the grounds that the examiner's classifications of the different independent claims in the instant application are in plain error, and the examiner's accompanying arguments supporting his claim groupings are inaccurate.

Summary of Arguments Against the Restriction

The instant restriction requirement must be withdrawn for at least these reasons: (1) the claim groupings and the corresponding class/subclass identifications made by the examiner are in plain error—even a cursory reading of the claims makes clear that the examiner's classification of the claims is wrong; (2) the examiner's arguments supporting his claim classifications have numerous errors in them, contain several logical contradictions, and stand as an overall mischaracterization of the claims; and (3) the examiner's identification of different species of the instant invention based on his groupings of the instant application's drawings is in gross error—for example, the examiner's groupings places a drawing of a tower to be reinforced

in the same species as a tower reinforcing leg of the instant invention but he excludes the leg-connecting flanges that are part of the tower reinforcing leg from that same species.

With all due respect, the instant restriction is indefensible. Its identification of classes is in plain error, its reasoning plainly fails to comport with proper restriction practice as set forth by the MPEP, and its treatment of the instant application's figures is in gross error. Applicant includes more detailed treatment of each of these points in the below text, and, respectfully, asks that the examiner consult with his supervisor when reviewing this traversal, so that the additional time and expense of forcing the removal of this restriction upon petition can be avoided.

#### Classification Errors

The four independent claims in the instant application and the corresponding classification identification made by the examiner appear below:

CLAIM	THE EXAMINER'S CLASSIFICATION
1. An assembly for reinforcing an existing tower, the assembly comprising: a plurality of reinforcing legs, with each reinforcing leg mounted adjacent a leg of the existing tower such that the reinforcing leg shares loads with the leg; a plurality of braces, with each brace connected to and extending between pairs of reinforcing legs mounted on adjacent legs of the existing tower; and wherein the plurality of reinforcing legs and braces form a reinforcing structural network that extends around at least a portion of the existing tower.	Class 52: Static Structures (E.G., Buildings)  Subclass 152: <u>Spaced or angularly related braces</u> "This subclass is indented under subclass 146. Apparatus having braces which are spaced or angularly related to each other."
24. A method of reinforcing an existing tower comprising: mounting reinforcing legs along at least a portion of each tower leg in the existing tower to share tower loads with the tower legs; and bracing the reinforcing legs by interconnecting pairs of reinforcing legs on adjacent tower legs of the existing tower with one or more cross braces.	Class 52: Static Structures (E.G., Buildings)  Subclass 745.04: <u>Tower support</u> "This subclass is indented under subclass 745.03. Subject matter wherein a plurality of subenclosed building units are supported from a tower or framework."

CLAIM	THE EXAMINER'S CLASSIFICATION
<p>34. A tower reinforcing system to reinforce an existing tower, the system comprising:  a plurality of reinforcing legs configured to mount adjacent to existing tower legs;  wherein each said reinforcing leg is cross braced with at least one other reinforcing leg to form a reinforcing structural network surrounding at least a portion of the existing tower.</p>	<p>Class 52: Static Structures (E.G., Buildings)</p> <p>Subclass 651.01: <u>Vertically oriented (e.g., tower)</u>  "This subclass is indented under subclass 648.1. Subject matter comprising a structure having imposing vertical dimensions."</p>
<p>45. A tower reinforcing system to reinforce an existing tower having one or more sections, the system comprising:  reinforcing legs configured to mount adjacent to tower legs of the existing tower by attaching at section joints of the tower legs;  each reinforcing leg configured to mount to a corresponding tower leg section and to share compressive loads transferred through the section joints of that tower leg section.</p>	<p>Class 52: Static Structures (E.G., Buildings)</p> <p>Subclass 736.4: <u>Partial sleeve (e.g., collar, etc.)</u>  "This subclass is indented under subclass 736.3. Structure including a covering which circumferentially envelopes only a portion of the longitudinal dimension of the shaft."</p>

Applicant cannot discern anything other than an almost arbitrary basis for making the different classifications. For example, apparatus claim 1 and method claim 24 both are directed to reinforcing an existing tower by mounting reinforcing legs adjacent to the existing tower, and cross-bracing pairs of those reinforcing legs. How does claim 1 end being classified solely on the bracing aspect (subclass 152), while claim 24 ends up being classified as relating to tower support (subclass 745.04)? (Note that the examiner's letter identifies "subclass 754.04" but since no such class exists, Applicant assumes that 745.04 was intended.) Moreover, use of subclass 745.04 appears to be in error anyway, since it deals with subject matter wherein a plurality of subenclosed building units are supported from a tower or framework, which is not the closest subject matter in the available Class 52 subclasses.

The error in identifying different classes continues with claims 34 and 45. For example, both claims are squarely directed to a "tower reinforcing system" having reinforcing legs configured to mount adjacent existing tower legs. The only claim difference is that 45 specifies attachment of the reinforcing legs at section joints of the existing tower legs. Against the obvious consistency of these two claims, the examiner states that claim 34 falls into Class 52,

Subclass 651.01, which includes subject matter “comprising a structure having imposing vertical dimensions,” while claim 45 falls into Class 52, Subclass 736.4, which includes “a covering which circumferentially envelopes only a portion of the longitudinal dimension of the shaft.” There is nothing in the claim language itself that gives Applicant any sense of how the examiner drew these classification distinctions, nor are the arguments in the accompanying restriction letter helpful in gaining any better understanding of the examiner's rationale.

#### Errors in the Examiner's Arguments for Restriction

In the examiner's statements in the Detailed Action Letter accompanying the restriction, he states, with regard to claims 1 and 34, that:

the process as claimed can be practiced by another materially different apparatus such as the apparatus having reinforcing legs mounted along at least a portion of each tower leg in the existing tower to share tower loads with tower legs instead of having reinforcing legs mounted on adjacent legs of the existing tower to share loads with legs, or by hand, or the apparatus as claimed can be used to [sic] between pairs of reinforcing legs mounted on adjacent legs of the existing tower (claim 1), or each of reinforcing leg [sic] is crossed braced [sic] with at least one other reinforcing leg to form a [sic] reinforcing structural network surrounding at least a portion of the existing tower (claim 34).

(Emphasis added.) First, it is unclear what distinctions the examiner is attempting to make in the above statement. However, it is clear that the comment “or by hand” has nothing to do with the claims, nor with any legitimate basis on which to restrict the instant claims. The examiner merely seems to have thrown that language into his arguments because it is mentioned in the MPEP.

Second, the examiner appears to be drawing a distinction between “adjacent legs,” “pairs of legs,” “between legs,” etc., but the plain language of the instant claims make clear that reinforcing legs are mounted adjacent to existing tower legs, and that pairs of those reinforcing legs can be braced together. One would hope that a common sense visual understanding of the instant invention as illustrated, described, and claimed in the instant application would make clear that describing the mounting of reinforcing legs adjacent to corresponding existing tower legs, and then cross-bracing pairs of those reinforcing legs does not describe different

apparatus, but merely describes the process of mounting reinforcing legs to an existing tower structure and then reinforcing them via bracing. This language plainly does not connote different apparatuses or methods.

### Species Errors

The examiner's attempt at identifying different "species" of the instant invention based on segregating the instant drawings is in gross error. The examiner allegedly identifies twelve different species of the instant invention and offers twelve different groupings of the drawings in support of his species distinctions. None of the drawing groups identified by the examiner make sense, and it is impossible for Applicant to "pick" any of the identified drawing groups because the groupings are nonsensical.

For example, the examiner states that Figures 1-3 and 18 comprise one species of the instant invention, and that Figures 1-3 and 19 comprise another species. Figure 1 is a diagram of a typical pre-existing tower that can be reinforced using the instant invention—it is not properly a "species" of applicant's invention. Moreover, Figure 18 illustrates the base reinforcing component of Applicant's claimed tower reinforcing system, while claim 19 illustrates further details for the base plate of that base reinforcing component. Plainly, these are not different "species" within any legally correct understanding of that word.

As a further example, the examiner identifies Figures 1-3, 4, 6A-6C, 7A-7F, 8A-8B, 9A-9C, and 10 as one species, and Figures 1-3, 5A, 5E, 5F, 6A-6C, 7A-7F, 8A-8B, 9A-9C, and 10 as another group. In short, the two "species" are differentiated in that one includes Figure 4 but not Figure 5, where the other one includes Figures 5A, 5E, and 5F, but not Figure 4. In looking at the drawings, and turning to the instant specification for its clear descriptions, Figure 4 generally illustrates reinforcing legs 42 and corresponding braces 44, while the various views in Figures 5 illustrate that each reinforcing leg 42 can be segmented and can including bridging gaps in them to bypass structural obstacles on the existing tower legs, for example.

These drawings are consistent with the language of the independent and dependent claims of the instant application, which call out the use of reinforcing legs at the independent claim level, and then identify particular illustrated features at the dependent claim level. Thus, all independent claims are generic in the sense that they plainly cover all inventive embodiments disclosed in the instant application. The examiner states that only claim 45 appears to be generic but he offers no explanation of that statement, and it seems to be based more on his erroneous class and species distinctions than on a plain reading of the claims.

Summary

By the above arguments, Applicant believes that the errors made by the examiner in the restriction have been carefully explained. On the basis of Applicant's thorough and considered traversal of the pending restriction requirement, it is asked that the restriction be withdrawn and that all claims as originally submitted be examined in the instant application.

Respectfully submitted,

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Date: 10/29/04